

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

In the matter of Edgar Stratton:)	
Violation of Section 13304 of the California Water Code,)	COMPLAINT NO. 6-98-80
Violation of Water Quality Standards prescribed in the)	FOR ADMINISTRATIVE
<i>Water Quality Control Plan for the Lahontan Region</i> , and)	CIVIL LIABILITY
Violation of Cleanup and Abatement Order No. 6-86-11A4)	

ISSUED TO EDGAR STRATTON, 10262 WEST RIVER STREET, TRUCKEE, NEVADA COUNTY, APN 19-120-11-000, YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are charged with a violation of provisions of law, or orders of the Regional Water Quality Control Board, Lahontan Region (Regional Board), for which the Regional Board may impose administrative civil liability pursuant to the California Water Code (CWC).
2. Unless waived, a hearing on this matter will be held before the Regional Board within 60 days following the issuance of this Complaint. You, or your representatives, will have an opportunity to address and contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. The hearing is scheduled for January 13 and 14, 1999 in South Lake Tahoe, California. An agenda showing the time set for the hearing will be mailed to you not less than ten days before the hearing date.
3. At the hearing, the Regional Board will consider whether to affirm, reject, or modify the proposed civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

ALLEGATIONS

4. **Edgar Stratton** violated the following provisions of law and orders of the Regional Board:

Cleanup and Abatement Order

The Executive Officer issued Cleanup and Abatement Order No. 6-86-11A4 to Edgar Stratton on June 26, 1998. Cleanup and Abatement Order No. 6-86-11A4 contains the following Orders:

- “1. By **June 12, 1998**, Kenneth Osburn and Edgar Stratton shall submit to the Regional Board a plan describing measures to identify the extent of soil and groundwater contamination caused by current and former activities at the site. At a minimum, the plan shall include:

- a) A proposal to identify the extent of soil contamination caused by previous activities and incidents at the site;
- b) A proposal to identify the impact that contaminated soil from activities at the site has on ground water; and,
- c) A time schedule for the proposed investigation.

The plan must be completed under the supervision of and stamped by a professional Civil Engineer or geologist who is registered in the State of California.

The investigation may be eligible and be conducted as a part of the Chevron/Texaco/Union Pacific Railroad co-mingled plume investigation described in this amended Order. Commitment to investigate the site under the co-mingled plume effort and acceptance to the co-mingled plume investigation effort may be substituted in lieu of the required plan. Written confirmation that the site was accepted to the co-mingled plume investigation effort must be submitted by **June 12, 1998** if this option is selected. Mr. Osburn's September 9, 1997 written indication that he will join in the cooperative commingled plume effort is considered to still be in effect unless revoked by Mr. Osburn.

- 2. By **July 17, 1998**, following approval of the plan by Regional Board staff, implement the proposed investigation plan described in Order No. 1 above. Activities include submitting appropriate paperwork to acquire all necessary permits, scheduling subcontractors, etc.
- 3. By **August 17, 1998**, submit a report detailing the findings of the proposed investigation plan described in Order No. 1 above. The report shall include monitoring data to indicate the concentrations of benzene, toluene, ethylbenzene, total xylenes, methyl tertiary butyl ether, and Total Petroleum Hydrocarbons in the gasoline and diesel fuel ranges found in the soil and ground water at the site. The report shall also include a proposal and time schedule for additional investigation work to define the extent of contamination emanating from past and current activities at the site should the initial investigation not fully define the extent of contamination. Maps delineating ground water isoconcentration contours for Total Petroleum Hydrocarbons – gasoline fraction, Total Petroleum Hydrocarbons – diesel fraction, benzene, and methyl tertiary butyl ether shall be included in the report. In addition, a potentiometric map showing ground water table contours, ground water flow direction and calculated gradient shall be included in the report.

4. Beginning **October 15, 1998**, submit to the Regional Board quarterly progress reports on the investigation and cleanup status which demonstrate continued progress toward cleanup of the site. The reports shall include monitoring data to indicate the concentrations of benzene, toluene, ethylbenzene, total xylenes, methyl tertiary butyl ether, and Total Petroleum Hydrocarbons in the gasoline and diesel fuel ranges found in the soil and ground water at the site. All data shall be cumulatively tabulated. Maps delineating ground water isoconcentration contours for Total Petroleum Hydrocarbons – gasoline fraction, Total Petroleum Hydrocarbons – diesel fraction, benzene, and methyl tertiary butyl ether shall be included in each report. In addition, a potentiometric map showing ground water table contours, ground water flow direction and calculated gradient shall be included in each report. Subsequent reports shall be submitted on January 15, April 15, July 15, and October 15 of each year.”
5. The following additional facts are the basis for the violations of Cleanup and Abatement Order No. 6-86-11A4.

Recent investigations of a co-mingled plume from former Chevron Station 9-0612 (10231 Donner Pass Road) and the former Texaco Site located on Donner Pass Road immediately southwest of the Chevron station have revealed that an Associated Oil bulk terminal was located at 10262 West River Street. The Associated Oil bulk terminal caught fire in the late 1970s. A representative from the Truckee Fire Department estimated that 7,000 gallons of gasoline was burned or released during this fire (October 8, 1996 Final Assessment Report for Former Chevron Station 9-0612). Soil samples collected during the construction of monitoring well MW-17 on May 27, 1997 (located on the former Associated Oil bulk terminal) were found to contain petroleum hydrocarbons indicating that the site had not been cleaned-up. The soil in MW-17 was found to contain:

Depth(feet)	7	10	22	30
TPHg (mg/Kg)	590	1200	1.8	<1.0
TPHd (mg/Kg)	5100	3400	61	2.9
Benzene (mg/Kg)	<0.25	0.83	<0.0050	<0.0050
Toluene (mg/Kg)	<0.25	0.89	<0.0050	<0.0050
Ethylbenzene (mg/Kg)	<0.25	2.4	<0.0050	<0.0050
Total Xylenes (mg/Kg)	0.74	6.1	<0.0050	<0.0050

Ground water analytic data from MW-17 indicated the presence of petroleum products above Regional Board action levels. The May 27, 1997 ground water sample for MW-17 contained:

Constituent	Sample concentration (µg/l)	Action level (µg/l)
Total	1300	50 (Taste & Odor)

Petroleum Hydrocarbon as Gasoline (TPHg)		
Total Petroleum Hydrocarbons as Diesel (TPHd)	720	100 (Taste & Odor)
Benzene	87	1 (Primary MCL, Carcinogen)
Toluene	4.7	42 (Taste & Odor)
Ethylbenzene	35	29 (Taste & Odor)
Total Xylenes	31	17 (Taste & Odor)
Methyl-tertiary-butyl ether (MTBE)	62	35 (Taste & Odor)

Based on the soil samples and history of the Site and the investigation results of the Chevron/Texaco/Union Pacific Railroad plume, the Site appears to be contributing to ground water contamination in the area.

CAO No. 6-86-11 was amended on August 4, 1997 to incorporate the Chevron/Texaco/Union Pacific Railroad information and to include Edgar Stratton as a responsible party. The revised CAO (CAO No. 6-86-11A1) required that Kenneth Osburn and Edgar Stratton submit a plan to investigate the site or commit to investigate the site under the Chevron/Texaco/Union Pacific Railroad co-mingled plume investigation. The CAO No. 6-86-11A1 was sent via certified mail to Mr. Stratton at Post Office Box 3117, Truckee, California 96160 and Mr. Osburn at Post Office Box 127, Truckee, California 96160. Both deliveries were returned as unclaimed.

CAO No. 6-86-11A1 was revised on August 28, 1997 to include an updated compliance schedule for submittal of an investigation plan or commitment to the co-mingled plume investigation. A copy of the revised CAO (CAO No. 6-86-11A2) was hand delivered on August 28, 1997 to Mr. Osburn. Mr. Stratton's copy of the CAO was delivered to "Rick", an employee of Dependable Tow (the business located at the site) on September 5, 1997. In subsequent telephone conversations with Mr. and Mrs. Stratton, they indicated that they had never received a copy of the CAO No. 6-86-11A2 and to mail a copy to their new post office box. A revised CAO was mailed to Box 3117 on September 12, 1997, but was returned as unclaimed on October 6, 1997. CAO No. 6-86-11A2 was revised on January 27, 1998 to include an updated compliance schedule for submittal of an investigation plan or commitment to the co-mingled plume investigation. The revised CAO (CAO No. 6-86-11A3) was hand delivered on February 7, 1998 to Mr. Stratton by a Nevada County Sheriff's officer.

CAO No. 6-86-11A3 was revised on May 21, 1998 to include an updated compliance schedule for submittal of an investigation plan or commitment to the co-mingled plume investigation. The revised CAO No. 6-86-11A4 was had delivered on June 4, 1998 to Mr. Stratton by a Nevada County Sheriff's officer. In addition, quarterly monitoring

events conducted in 1998 in MW-17 detected concentrations at up to 78,000 ppb TPH as diesel, 4,600 ppb TPH as gasoline, 151 ppb as benzene, and 460 ppb MTBE.

PROPOSED CIVIL LIABILITY

6. For the failure to comply with Cleanup and Abatement Order No. 6-86-11A4, the Regional Board may impose administrative civil liability under the following section:

Pursuant to Section 13350(d)(1) of the CWC, when there is a discharge and an order of the Regional Board is violated, liability shall be imposed not to exceed five thousand dollars (\$5,000), but which shall not be less than five hundred dollars (\$500), for each day in which the violation occurs.

7. In this matter, Regional Board staff have determined that requirements of Cleanup and Abatement Order No. 6-86-11A4 have been violated on the dates June 12, 1998 through November 1, 1998. Therefore, the maximum administrative civil liability pursuant to Section 13350(d)(1) for 142 days of violation is \$710,000, and the minimum is \$71,000.

8. Pursuant to Section 13327 of the CWC, the Executive Officer has considered the following factors in recommending the amount of the administrative civil liability:

- a. *The nature, circumstances, extent, and gravity of the violation or violations;*

The violations are of a very serious nature, involving discharge of petroleum products to ground water in violation of the CWC and waste discharge prohibitions in the 1995 *Water Quality Control Plan for the Lahontan Region*. On February 10, 1986, Regional Board staff observed a large area of soil under the western half of an above-ground tank that appeared to be contaminated with petroleum product to a depth of greater than one foot. A five-gallon bucket was also located below the tank. The bucket was full and contained a mixture of petroleum products and water. Since that time four amended CAOs (6-86-11A1 through 6-86-11A4) have been issued to identify the extent of soil and ground water contamination at the site. A monitoring well (MW-17) was constructed on the property as part of a co-mingled plume investigation from the former Chevron and Texaco stations and Union Pacific Railroad. Soil in MW-17 was found to contain gasoline at 590 mg/Kg and diesel at 5100 mg/Kg. Ground water analytical results from MW-17 indicate the presence of petroleum products above Regional Board action levels. Based upon the results from the co-mingled plume investigation it appears that the Site is contributing to ground water contamination in the area and noncompliance by the discharger is exacerbating the problem.

- b. *Whether the discharge is susceptible to cleanup or abatement;*

The discharge is susceptible to cleanup, but has not been cleaned up.

- c. *The degree of toxicity of the discharge;*

The discharge contains petroleum products (total petroleum hydrocarbons, benzene, ethylbenzene, xylenes, and methyl tertiary butyl ether) in toxic amounts.

d. *The violator's ability to pay;*

The violator has not provided financial data to the Regional Board to show its inability to pay or effect on the violator's ability to continue business. However, imposition of the minimum fine may impose a significant financial burden to the discharger.

e. *The effect on the violator's ability to continue business;*

See explanation in "d" above.

f. *Any voluntary cleanup efforts undertaken by the violator;*

No voluntary cleanup efforts were undertaken by the violator.

g. *Any prior history of violations;*

The violator has a prior history of violating Regional Board requirements in this matter. The violator did not submit a workplan to the Regional Board to investigate groundwater quality at the site as required by Order No. 6-86-11A3 by March 4, 1998, Order No. 6-86-11A2 by September 9, 1997 and Order No. 6-86-11A1 by August 15, 1997.

h. *The degree of culpability;*

Edgar Stratton is the land owner and was knowledgeable of the discharge prior to the property transaction. Edgar Stratton is culpable to a high degree for the violations.

i. *Any economic savings for the violator resulting from the violation;*

Economic savings from avoidance and postponement of cleanup costs are estimated at more than \$7,000. This amount is based on 8% interest earned on approximately \$80,000 which is the estimated cost for implementing clean up actions and includes two quarterly monitoring and sampling costs non-recoverable at \$2,500 per event.

j. *Other matters as justice may require;*

On June 26, 1998, Edgar Stratton was issued a Notice of Violation (NOV). The NOV requested that a plan to investigate soil and ground water as required by the CAO No. 6-86-11A4 be submitted immediately. The NOV was sent via certified mail to Mr. Stratton at Post Office Box 3117, Truckee, California 96160. The letter was returned as unclaimed on July 13, 1998. The deliberate ongoing unclaimed mail by Edgar Stratton has resulted in significant consequences to third parties. Edgar Stratton's failure to commit to investigate the site has delayed Chevron/Texaco/Union Pacific Railroad's co-mingled plume investigation.

9. The Executive Officer of the Regional Board proposes that administrative civil liability be imposed by the Regional Board in the amount of \$71,000, pursuant to Section 13350(d)(1) of the CWC.

WAIVER OF HEARING

10. You may waive the right to a hearing. If you choose to waive the hearing, please check and sign the waiver and return it prior to the proposed hearing date, together with a cashier's check or money order for the amount of civil liability proposed in paragraph 9 above, to the following address:

California Regional Water Quality Control Board
Lahontan Region
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150

Ordered by: _____ Dated: _____

HAROLD J. SINGER
EXECUTIVE OFFICER

Edgar Stratton
10262 West River Street

- 8 -

Administrative Civil Liability
Complaint No. 6-98-80

WAIVER OF HEARING
FOR COMPLAINT NO. 6-98-80
EDGAR STRATTON
FOR VIOLATION OF SECTION 13304 OF THE CALIFORNIA WATER CODE,
VIOLATION OF WATER QUALITY STANDARDS PRESCRIBED IN THE *WATER*
QUALITY CONTROL PLAN FOR THE LAHONTAN REGION, AND
VIOLATION OF CLEANUP AND ABATEMENT ORDER NO. 6-86-11A4

DATES OF VIOLATION:
JUNE 12, 1998 THROUGH NOVEMBER 1, 1998

- [] By checking the box, I agree to waive my right to a hearing before the Regional Board regarding violations in Complaint No. 6-98-80, and to remit payment for the administrative civil liability imposed. I understand that I am giving up my rights to contest the allegations made by the Executive Officer in this Complaint, and to contest the imposition of, or the amount of, the civil liability proposed.

Edgar Stratton

Dated:_____